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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,952	01/25/2002	James W. McCaherty	8350.0763-00	6974
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EXAMINER FISHER, MICHAEL J				
ART UNIT		PAPER NUMBER		
3689				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/054,952

Applicant(s)

MCCAHERTY, JAMES W.

Examiner

MICHAEL J. FISHER

Art Unit

3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/226)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 17-22,24-29 ,32-40 and 42-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over US PAT 4,605,081 to Helmly.

As to claims 17,33, Helmly discloses a computerized (fig 1) method for analyzing compliance with payload standard comprising a module for determining a first target payload (160, as best seen in fig 5), obtaining weight data for equipment (158, as best seen in fig 5), a module for comparing the two and analyzing compliance (168, 166, as best seen in fig 5) and further checks if the weight is over or under the target (col 2, lines 4-12) and a module for outputting the results (fig 4), the payloads are recorded (col 8, lines 43-46),

It would have been obvious to use the data for long term analyzing the payload as Helmly teaches the system as being used to comply with government regulations (abstract, lines 4-8) and if a particular place shows a pattern of placing a load that is above legal limits the company would be in danger of legal action taken against it, the period of time for analyzing compliance spans multiple different hauling events (it is used whenever the truck operates with a load)

As to claim 40, it is done periodically (whenever the truck is carrying a load). The loading practice would be modified based on the target payload (the amount dispensed).

As to claim 49, the system performs the tasks, therefore, it would have modules.

As to claims 18, Helmly discloses analyzing compliance (168, 166, as best seen in fig 5), analyzing compliance with a second payload standard (length of truck, 164, as best seen in fig 5) not equal to the first (weight).

As to claims 19, the target payload is based on type of payload (abstract, lines 8-13), it is inherent that different payloads would have different legal limits.

As to claims 20,21, Helmly discloses obtaining the empty weight (col 2, lines 20-22), as Helmly discloses it as being used more than once, it would be done for two or more pieces of equipment of the equipment type (tractor-trailer). Helmly does not, however, teach averaging the weights of multiple equipments (fleet or not). It would have been obvious to one of ordinary skill in the art to average the weights of multiple trucks for statistical purposes such as determining an average for all trucks of the same type.

As to claims 22 it would be inherent that a target payload is that which is added to the empty weight to achieve target payload, therefore, it would have been obvious to do this subtraction to determine the proper load.

As to claims 26, applicant has shown the percentage of acceptable overload to be old and well known in the art (paragraphs 2-6, starting on pg 1 of the specification of the instant application), as such, it would have been obvious to one of ordinary skill in the art to determine the percentages as the applicant has shown that this is well known. Compliance would have been checked using this standard.

As to claims 24, Helmly would have determined this if the payload weights were above the maximum threshold.

As to claims 27, Helmly discloses providing a compliance rating based on the comparison ("...within allowable weight", col 7, lines 43-51).

As to claims 28 Helmly determines the payload on a predetermined factor (maximum allowable weight).

As to claims 29 Helmly discloses graphically illustrating the results (fig 4).

As to claims 32, Helmly discloses determining equipment identification (col 5, lines 17-28).

As to claim 25, it would have been obvious to one of ordinary skill in the art to use the lesser of these values to ensure that the truck is compliant.

As to claims 34, 35, there is a network connection (fig 1).

As to claim 36, the output module is connected to a device to send data over a network (fig 1).

As to claim 37, there is shown to be a payload database (inherent in that the system is shown to have payload weight information, col 2, lines 4-10), a processor (fig 1), an equipment database (inherent in that there is shown to be information stored on the equipment) with payload standard information (what type of payload the vehicle can carry).

As to claims 38,46, it would have been obvious to one of ordinary skill in the art to obtain payload compliance data to check for compliance as overloading a vehicle could void the warranty.

As to claim 39, it would have been obvious to have a standard and to determine the numbers as this would quantify the results.

As to claim 42, it is old and well known in the art to know the time duration of a hauling event (there are many laws in place that require truck drivers to record their time driving to ensure they do not go over legal limits), therefore, it would have been obvious to record hauling time as this is often required by law.

As to claims 43, it would be obvious to change the numbers if they are found to not be accurate, thereby meeting the limitations as claimed.

As to claim 45, it would be obvious to use operation time as a long haul with a heavy load would be much harder on the truck than a shorter haul.

As to claim 47, the system always checks compliance, therefore, it would be over the "entire calendar period of time".

As to claim 48, it would be obvious to use the analysis for requesting warranty service as, as previously discussed, if the load was more than the warranty specifies for

that vehicle (even if it is legal for Dept. of Transportation purposes), then this would void the warranty and would mean warranty service would not be provided.

As to claim 50, Helmly discloses tracking underages (as previously discussed), it would be obvious to further parse for percentages to see if a particular operator or station routinely underloads vehicles as this would waste money.

Claims 23 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helmly as applied to claims above, and further in view of US PAT 7,136,787 to Schlessinger et al. (Schlessinger).

As to claims 23 and 31, Helmly teaches a method and system as discussed above. Helmly does not, however, teach using statistical analysis, such as standard deviation, to refine the data.

Schlessinger teaches using standard deviation for statistical analysis (col 17, lines 38-40, claim 36, claim 53), therefore, it would be obvious to use standard deviation and statistical methods as taught by Schlessinger to refine the data of Helmly to ensure accuracy of computations to ensure compliance with the law on all payloads, as Helmly does not teach using the system only once, it would be obvious to track overloads so as to ensure proper payloads in the future to reduce the risk of fines.

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. FISHER whose telephone number is (571)272-6804. The examiner can normally be reached on Mon.-Fri. 7:30am-5:00pm alt Fri. off.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Fisher/
Examiner, Art Unit 3689
MF

6/7/10